THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.5445 OF 2002

DATE: 23rd November 2006

Between:
R.Prem Kumar, s/o R.Srinivas,
Aged 25 years, r/o Pitilabase (M),
Medak District, A.P.

…Petitioner

And

1. A.P. State Civil Supplies Corpn., Ltd.,
   rep. by its Vice-Chairman/Managing Director,
   Somajiguda, Hyderabad, A.P. and 4 others.

…Respondents.

* * *

ORDER:

This writ petition is filed seeking a writ of Mandamus declaring action of the first respondent in passing the proceedings No.PDS/Movt/FG.5(69)/2001-2002, dated 05.01.2002 and 10.01.2002, blacklisting the petitioner and his representatives from participating in any tenders of Corporation in future, forfeiting security deposit of Rs.4,00,000/- plus Bank Guarantee of Rs.5,00,000/- and withholding the bills for about Rs.17,00,000/- without giving any notice and without hearing, as arbitrary, illegal, unreasonable and violative of principles of natural justice.

2. It appears that the petitioner entered into an agreement on 14.3.2001 with the Andhra Pradesh State Civil Supplies Corporation Limited for transport of rice from Food Corporation of

India godown to MLS points etc., While entering into the contract, he has deposited Rs.4,00,000/- in cash and Rs.5,00,000/- bank guarantee as security. While so, under the impugned proceedings dated 05.01.2002 it was alleged that certain stocks were taken delivery from FCI godown on 08.11.2001 but they were not delivered at various MLS points as required under the orders of the respondents. Therefore, the bills claimed by the petitioner for transport of the goods, on 9.11.2001 were not honoured and ultimately, the police seized the stocks and F.I.R No.46/2001 was registered with the Station House Officer, Manoor, Medak District. Thereafter, on the basis of information and other material made available, the Vice-Chairman and Managing Director of the Corporation held that the agreement executed by the petitioner is terminable with immediate effect and the ad-hoc arrangements have been made for the un-expired period of contract at the cost of the said contractor as per the clause 8(c) and (d) of the agreement. Further, the security deposit of Rs.4.00 lakhs and the Bank Guarantee of Rs.5.00 lakhs furnished by the contractor were forfeited to recover the loss suffered by the Corporation from the contractor. Aggrieved by the same, the present writ petition is filed.

3. Learned counsel for the petitioner Sri K.M.Mahendra Reddy strenuously contended that the impugned order is passed in violation of principles of natural justice. Further, the charge levelled against the petitioner was not properly enquired and not proved by any evidence on record. Therefore, the same is arbitrary, illegal and liable to be set aside. Further, the

respondents have no such power either to terminate the contract of the petitioner or in blacklisting him.

4. Whereas, learned senior counsel Sri N.Subba Reddy, appearing for the respondents contended that the matter is purely in the realm of a private contract between the parties, therefore, no writ petition under Article 226 of the Constitution of India, is maintainable. The authorities have power both for termination of the contract entered into between the parties and also blacklisting the petitioner. Therefore, this Court cannot examine as to the merits and demerits of the impugned order. Since the matter is purely in the realm of a private contract (non-statutory), the only aspect that may be available for examination of the Court is whether the respondents have power to take such action under the agreement between the parties.

5. I have given my earnest consideration to the respective submissions made by the learned counsel on either side and also perused the other material made available on record.

6. Admittedly, under clause 1(d) and clause 8(c) (d) of the agreement dated 14th March 2001 meant for transport of food grains, pulses etc., from various places within the district and out side the district of Medak to various places within the district. The above clauses reads as under:-

> "1(d): The contractors are prohibited from engaging the trucks of the rice Millers or their Associations for the purpose of transportation of food grains under PDS and

they should not have any tie-up arrangements with the Rice Millers or their Associations for transportation of food grains of the Corporation under PDS. In the event of any lapse on the part of the contractor in this regard, the Corporation shall have absolute right to terminate the agreement at any time during the currency of the agreement besides forfeiture of the Security Deposit, Bank Guarantee and the contractor will be BLACKLISTED. In this regard, the action of the Corporation is final and binding on the contractors.

8(c): The contractor or his representative is responsible for the quantity and quality of the stocks as delivered to him. The Corporation shall have absolute right to suspend the contract at any time during the currency of the agreement, without any notice or without assigning any reasons, if the contractor or his representative is involved in a case under Essential Commodities Act or any other Acts. The contractor is responsible for any acts of his representatives, agents, employees including truck owner, driver/cleaner of the truck in which stocks are loaded for transportation.

8(d): The Managing Director shall have the right without prejudice to other rights and remedies the right in the event of breach by the contractor of any of the terms and conditions of the contract to terminate the contract forthwith and to get the work done for the un-expired period of the contract at the risk and cost of the contractors and/or forfeit the Security Deposit or any part thereof and also claim from the Bankers who gives Bank Guarantee for the sum or sums due for any damages, losses, charges, expenses or costs that may be suffered or incurred by the Corporation due to the contractor's negligence or unworkman-like performance of any of the services under the contract. The Managing Director, Andhra Pradesh State Civil Supplies Corporation Limited shall also have the right to claim from the contractor or to invoke Security Deposit and Bank

Guarantee to recover any dues from them."

From a plain reading of the above clauses it cannot be said that the respondents have no power to pass an order terminating the contract and blacklisting the petitioner and further forfeiting earnest money deposit as well as bank guarantee furnished by the petitioner. Once the power is available as per the agreement between the parties, such an action taken under the clauses in terms of the agreement etc., cannot be gone into in this writ petition, since an arbitration clause is available i.e., clause 23. In view of the above, I am of the opinion that the action taken by the respondents cannot be said to be either arbitrary or illegal and not in tune with the terms of the contract entered into between the parties. Therefore, the writ petition is devoid of merits and liable to be dismissed.

7. Accordingly, the writ petition is dismissed. However, this will not preclude the petitioner from invoking arbitration clause 23 of the agreement and work out his remedies as available under law. It is needless to mention that any observations made herein will not have any bearing while deciding the matter by the arbitrator.

_____

C.V.RAMULU, J.

Date: 23rd November 2006.
BSB